**POLITICAL SCIENCE ASSIGNMENT (POL 104)**

**BY**

**AOFOLAJU ABIOLA TEJUMOLA**

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**INTERNATIONAL RELATIONS AND DIPLOMACY**

**100 LEVEL**

**Question:**

**Constitution is important for the consolidation of democracy. However, the making of Nigeria’s constitutions has been under two political dispensations that have anti-democracy tendencies, and this has been a great impediment to democratic governance in Nigeria. Examine some of the loopholes in Nigeria’s constitutions over the years that have affected democracy in Nigeria.**

A constitution is an aggregate of fundamental principles or established precedents that constitute the legal basis of a policy organization or other type of entity and commonly determines how that entity is to be governed. When these laws are written down in a single document or set of legal documents, these documents may be said to be embody a **written constitution**. However, if it is written down in a single comprehensive document, it is said to be a **codified constitution.** Some constitutions such as that of the United Kingdom are uncodified but written in numerous fundamental acts of a legislature court cases or treaties.

 **Types of constitution.**

1.Codified constitution

2.Uncodified constitution

3.Flexible constitution

4.Rigid constitution

1. **A written constitution** is a supreme and fundamental law. It is supreme in the sense that is harder to change than ordinary law and prevails over ordinary law in case of incompatibility. It occupies a place at the apex of the hierarchy of legal norms at the law superior from which other law derive the authority. In addition, its principles protect the rights of citizen establishes governing institutions regulate the relationship between them.

 2. **An unwritten(uncodified) constitution**, according to Lord Bolingbroke, is “the whole assemblage of laws, institutions, traditions, customs and practices that embody how we are governed”. Parts of that unwritten constitution are of course written down but that is immaterial. An unwritten constitution is a contradiction in term and that the alternative to a supreme law is arbitrary and chaos. A significant disadvantage, however is that controversies may arrive due to different understandings of the cases and customs which form the fundamental provisions of the constitution.

Merit of unwritten constitution include:

\*An unwritten constitution being flexible is able to deal with the changes in the conditions of the country.

 \*As an unwritten constitution, over a long period increases in wisdom and maturity.

 \*There is no much fear of rebellion or revolution in a country that makes use of an unwritten constitution.

 \*In a country with an unwritten constitution, customs, traditions and conventions receive due importance.

Demerits of an unwritten include:

\*Unwritten constitution can contain rules that are unclear, ambiguous and elicit doubt.

 \*As it is very easy to bring about changes in a political system with an unwritten constitution, many undesirable changes may take place resulting in a lot of policies and laws which do not serve to benefit the masses.

\*An unwritten constitution is not so good for federal system as it doesn’t allow for proper distribution of power between the state and federal units.

 The difference between written and unwritten constitution stated so far are more theoretical than practical, although most countries have opted for written constitutions. Written constitutions are not necessarily superior to unwritten constitutions, as in many countries that make use of a written constitution, the people are still deprived of their basic rights.

3. **A Flexible constitution** makes no distinctions between ordinary law and constitutional law. Both the laws are enacted in the same manner and their source is also the same. In this type, the constitution may be written or mainly based on agreement. The amendment of the flexible constitution requires no special procedure the constitution of Britain is an example of a flexible constitution.

Merit of flexible constitution include:

\*A flexible constitution can be amended with the same ease and facility with which it is enacted. This makes possible the adjustment of the constitution to the changing needs of the society.

\* A flexible constitution can easily adopt the needs of people with the change of time because of its elasticity and when the demands of people are fulfilled by the constitution, there is hardly any chance of revolution.

 \*A flexible constitution is very useful for developing a country because it is a great expression of its development. This is because it does not hinder progress due to its adaptability and at the same time, it protects the basic principles of the constitution.

Demerits of a flexible constitution.

 \*Due to its flexible nature the constitution keeps on changing, it may be changed just to satisfy people who are in majority ignoring the welfare of minority.

 \*It fails to provide a stable system in administration which may result in the poor performing of the government.

 \*Due to the simple procedure of amendment it is liable to be seriously affected by ever changing popular passion.

 \*The amendments may be based on emotions rather than facts and necessity, which will in turn disturb the harmony and balance of a nation

 \*Flexible constitution is not suitable for a federal system because the rights of constituent’s units are not guaranteed due to flexible nature of the constitution

4. **A Rigid constitution** is one which requires a special procedure for amendment. The constitutions of USA, Australia and Switzerland are examples of a rigid constitution. The rigid constitution is above the ordinary law and can be changed by a procedure, which is different from the procedure of ordinary law, thus making it difficult to change.

Differences between the flexible and the rigid constitution include:

1. A flexible constitution can be amended with great ease just like the ordinary law, while a rigid constitution cannot be amended easily it has very complex amendment procedures.
2. A flexible constitution can be adjusted as per the changing needs of the people and society, while a rigid constitution cannot be adjusted according to the changing needs of the society. No legislature can tamper with it because it is superior to ordinary law.
3. A flexible constitution is very useful for a developing country as it would not hinder the progress due to its adaptability, while a rigid constitution is essentially written constitution which is usually created by experienced and learned people thus it is the symbol of efficiency.
4. A flexible constitution is based on sound assumption that there cannot be a perfect constitution for all times, while a rigid is based on the assumption that is the constitution is a suitable solution for all situations.

In 1861 Lagos became a British colony and centre for expansion of British political influence and vested economic interest, which blossomed with aggressive military expansion at the end of the 19th century. In 1900, the north was declared a protectorate followed by the amalgamation of northern and southern protectorates in 1914. Constitutions were formally introduced soon after. Some of the governors-general appointed to be in charge of the newly formed country were the innovators of the very first constitutions used in Nigeria.

**Clifford constitution of 1992**

 Sir Hugh Clifford succeeded in 1922 as governor-general of Nigeria. He abolished the Nigeria council and put in place a new legislative council for the whole of the Southern protectorate. The Northern protectorate was to be governed by proclamation coming from the governor. The legislative council comprised 24 official members and 12 unofficial members, making a grand total of 36 members. The unofficial members were 6 Europeans representing commerce, shipping, banking, mining, chambers of commerce and 6 Africans who were: the Sultan of Sokoto, Alaafin of Oyo, Emir of Kano, Chief Dogho Numa and a few educated Nigerians from Lagos and Calabar. The officials included members of the executive council, first class residents, political secretaries and secretaries of southern and northern provinces. Most of the members could not see themselves as bonafide members of the council. Even the educated Nigerians who were in unofficial capacity did not play any vital role either.

 Merits of Clifford constitution include:

\*Elective principle: The Clifford constitution brought the elective principle into Nigeria which paved way for elective representation of Nigerians into the legislative council.

\*The genesis of political activities in Nigeria: The Clifford constitution permitted the formation of political parties in Nigeria so as to ensure greater participation of Nigerians in their government. E.g. The Nigeria National Democratic Party (NNDP) of Herbert Macaulay.

\*Nationalism: The constitution geared up nationalism among Nigerians.

Demerits of Clifford constitution.

\*The legislative council was dominated by Europeans, with little say from the Africans who were being ruled and obviously more familiar with the social, political and economic climate of their country.

\*Partial representation: The elective principle introduced by the Clifford constitution of 1922 worked only for the legislative council, excluding all others.

**Richard constitution of 1946**

 Arthur Richard was the Governor General whose constitution came into effect on 1st January 1946. He submitted his constitutional proposal to the Nigerian legislature on 2nd of August and it was later passed into law by the imperial parliament.

 **Macpherson constitution of 1951**

 This constitution was named after its innovator, John MacPherson. This constitution was fully recognized after the constitutional conference that was held with Nigerians colonial authorities. It was the first time in Nigerian constitutional development that people were given an opportunity to express their opinions as well as participate in drafting of the constitution. A central legislature for the country as a whole was formed and the regional council controlled public revenue while the central was responsible for annual grants. In addition, Nigerians were given ministerial positions albeit without any ministerial responsibilities. Finally, this constitution endorsed a quasi-federal system in which power was shared between the central and region.

**The Lyttleton constitution of 1954**

The promulgation of this constitution was a function of the London and Lagos constitutional conference. It was named after the founder, Oliver Lyttleton and it was fully recognized in October 1945. Under this constitution, Nigeria become a federation of three regions. The constitution marked the beginning of real representatives’ government in Nigeria and also provided for the office of the speaker and deputy speaker.

A loophole is an ambiguity or inadequacy in a system, such as a law or security, which can be used to circumvent or otherwise avoid the purpose, implied or explicitly stated, of the system. A number of case scenarios and constitutional matters suggest that the Nigerian constitutions, particularly the ones enacted in 1999 has a number of gaps which have been at issue in effective governance and politics in Nigeria. As all thing man made are, Nigeria’s constitutions cannot be said to be devoid of challenges and errors which have served in one way or another to hinder democracy. In some cases, the initiators of the constitution included Africans in neither the constitution making process nor the governance. Obviously, there was no democracy in these cases because how could the governors claim to know what the people wanted when they didn’t even bother to ask them?

At two different conferences to mark the 57th anniversary of Nigeria’s independence, stakeholders drawn from the academic, politics, sports, civil and religious organizations, took a critical look at the country and proffered ways around the challenges of constitutional issues troubling the nation.

One of such problems is the local government system. The new Nigerian local government system was clearly intended by its creators to be a representative and democratic system of devolution, to reduce the volume of pressure on the central government as well as to make the governance more easily accessible to the masses. The speed with which elected councils have been dissolved and replaced by caretaker committees and state appointees contrasts strangely with the constitutional provision that there should be a system of local government by democratically elected local councils. The constitutionality of dissolution has been confused with the constitutionality of further local government reform. Dissolution should be seen as an emergency measure to be used rarely in cases of proven maladministration by a local government. Further reform and reorganization of a state's system of local government should be regarded as a legitimate power of the state legislature. The role given by the Constitution to local government should not be interpreted as entrenching the system. Constitutional amendment is not required should further reform be necessary.

There is one phrase whose exact denotation is problematic. It is “indigenous to” which was first used in the Constitution of the Federal Republic of Nigeria (CFRN) 1979.The term was not properly spelt out in the 1999 constitution and it has often created problems in understanding and delineating who is an indigene and who is not beyond that what should be considered in the context of indigeneity and what should not. Again, there is a gap on aspects of citizenship involving male foreigners married to Nigerian women and wishing to gain Nigerian citizenship. In Section 26, a Nigerian citizen is defined and process of citizenship by naturalization and registration is stated, however the silence about the process of citizenship for non - Nigerian men perhaps results in challenges of marriage instability.

In addition, the laws concerning sexual discrimination contained in section 42(1-3), is another concept in the constitution that has been poorly implemented in practical terms. The right to dignity of womanhood in section 34 has also been poorly internalized and implemented in the Nigerian constitution as women and their rights are still being marginalized in the present day.

Fifty-seven years after attaining political independence, stakeholders in Nigeria are still engaged in intense debates on the most appropriate system of government to adopt for good governance. While it is being canvassed in some quarters that the present 1999 Constitution is nothing but a failed document incapable of redeeming the country from its present predicament, others believe that the question of constitution is not the major setback for the nation’s development but that of attitude. The agitation particularly took a worrisome dimension after July 26 when the upper chamber of the National Assembly rejected the constitution alteration bill seeking the devolution of powers that would have moved some items from the bloated exclusive legislative list in the 1999 Constitution to the concurrent list, which would have given more powers to the federating units.

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